

Item SPR05-21 Response Form

Title: *Writ of Execution* (revise form EJ-130)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2005

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council, the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action..*

Invitation to Comment (SPR05-21)

Title	<i>Writ of Execution</i> (revise form EJ-130)
Summary	<i>Writ of Execution</i> (form EJ-130) would be revised to clarify that no interest should be charged on fees that were not paid by public entities, but that are imputed and included in the total judgment.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665 patrick.o'donnell@jud.ca.gov
Discussion	<p>As currently structured, <i>Writ of Execution</i> (form EJ-130) implies that interest should be charged on certain fees imputed to public agencies that are to be included in judgments, but on which no interest should be charged. This proposal would clarify the wording on the form to indicate that interest should not be charged on such fees.</p> <p>On the existing form EJ-130, items 11–16 work well for calculating interest on ordinary judgments. However, a problem arises in certain cases because, although public entities pay no court fees under Government Code section 6103, the clerk entering judgment “shall include as a part of the judgment the amount of the filing fee, and the amount of the fee for the service of process or notices which would have been paid but for section 6103, designating it as such.” (Gov. Code, § 6103.5(a).)</p> <p>If such imputed fees are included in the judgment, the total judgment in item 11 of form EJ-130 may include such fees in cases where a judgment is recovered by a public entity. But as far as these imputed fees are concerned, “no interest shall be computed or charged on the amount of the fee.” (Gov. Code, § 6103.5(b).) Thus, if interest is calculated in the usual manner based on items 11 through 15, the calculation would erroneously include interest on the fees imputed to government agencies.</p> <p>To rectify this problem, the following underlined words would be added to item 16: “Interest after judgment (per filed affidavit CCP 685.050) <u>(not on GC 6103.5 fees)</u>.” This would clarify that the interest calculation for persons using the form EJ-130 does not include interest on the imputed fees where a public entity has recovered a judgment.</p>
	Attachment

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

— Items continued from the first page —

4. ☐ **Additional judgment debtor** (*name and last known address*):

7. ☐ **Notice of sale** has been requested by (*name and address*):

8. ☐ **Joint debtor** was declared bound by the judgment (CCP 989-994)

a. on (*date*):

b. name and address of joint debtor:

a. on (*date*):

b. name and address of joint debtor:

c. ☐ additional costs against certain joint debtors (*itemize*):

9. ☐ (*Writ of Possession or Writ of Sale*) **Judgment** was entered for the following:
- a. ☐ Possession of real property: The complaint was filed on (*date*): **(Check (1) or (2)):**
- (1) ☐ The Prejudgment Claim of Right to Possession was served in compliance with CCP 415.46.
The judgment includes all tenants, subtenants, named claimants, and other occupants of the premises.
- (2) ☐ The Prejudgment Claim of Right to Possession was NOT served in compliance with CCP 415.46.
- (a) \$ _____ was the daily rental value on the date the complaint was filed.
- (b) The court will hear objections to enforcement of the judgment under CCP 1174.3 on the following dates (*specify*):
- b. ☐ Possession of personal property.
- ☐ If delivery cannot be had, then for the value (*itemize in 9e*) specified in the judgment or supplemental order.
- c. ☐ Sale of personal property.
- d. ☐ Sale of real property.
- e. Description of property:

NOTICE TO PERSON SERVED

WRIT OF EXECUTION OR SALE. Your rights and duties are indicated on the accompanying Notice of Levy.

WRIT OF POSSESSION OF PERSONAL PROPERTY. If the levying officer is not able to take custody of the property, the levying officer will make a demand upon you for the property. If custody is not obtained following demand, the judgment may be enforced as a money judgment for the value of the property specified in the judgment or in a supplemental order.

WRIT OF POSSESSION OF REAL PROPERTY. If the premises are not vacated within five days after the date of service on the occupant or, if service is by posting, within five days after service on you, the levying officer will remove the occupants from the real property and place the judgment creditor in possession of the property. Except for a mobile home, personal property remaining on the premises will be sold or otherwise disposed of in accordance with CCP 1174 unless you or the owner of the property pays the judgment creditor the reasonable cost of storage and takes possession of the personal property not later than 15 days after the time the judgment creditor takes possession of the premises.

► A Claim of Right to Possession form accompanies this writ (*unless the Summons was served in compliance with CCP 415.46*).